

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:20-cv-00160-MR-WCM**

**CITY OF BREVARD, a North  
Carolina Municipal Corporation,**

**Plaintiff,**

**vs.**

**CDM SMITH, INC.,**

**Defendant.**

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**ORDER**

**THIS MATTER** is before the Court on the Defendant's Motion to Dismiss [Doc. 11]; the Magistrate Judge's Memorandum and Recommendation [Doc. 16] regarding the disposition of said motion; and the Defendant's Objections to the Magistrate Judge's Memorandum and Recommendation [Doc. 17].

Pursuant to 28 U.S.C. § 636(b) and the Standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the Defendant's Motion to Dismiss and to submit a recommendation for its disposition. On February 2, 2021, the Magistrate Judge issued a Memorandum and Recommendation, recommending that the Defendant's Motion to Dismiss be granted in part and

denied in part. [Doc. 16]. On February 16, 2021, the Defendant filed Objections to the Magistrate Judge's Memorandum and Recommendation [Doc. 17]. The Plaintiff filed its Response on March 9, 2021. [Doc. 20].

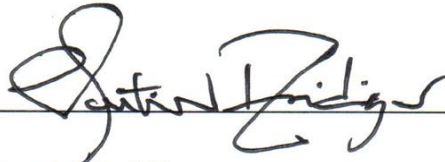
After a careful review of the Memorandum and Recommendation, the Court concludes that the Magistrate Judge's proposed conclusions of law are correct and are consistent with current case law. Accordingly, the Court overrules the Defendant's objections and accepts the Magistrate Judge's recommendation that the Defendant's motion to dismiss should be granted in part and denied in part.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendant's Objections to the Magistrate Judge's Memorandum and Recommendation [Doc. 17] are **OVERRULED**, and the recommendation of the Magistrate Judge [Doc. 16] is **ACCEPTED**.

**IT IS FURTHER ORDERED** that the Defendant's Motion to Dismiss [Doc. 11] is **GRANTED IN PART** and **DENIED IN PART**. Specifically, the Motion is **GRANTED** with respect to the Plaintiff's claims for negligence and breach of fiduciary duty, and these claims are hereby **DISMISSED WITH PREJUDICE**. The Motion is **DENIED** with respect to the Plaintiff's claim for breach of contract.

**IT IS SO ORDERED.**

Signed: March 16, 2021

A handwritten signature in black ink, appearing to read "Martin Reidinger", written over a horizontal line.

Martin Reidinger  
Chief United States District Judge

